

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**INCOME TAX REFERENCE No. 42 of 1998****For Approval and Signature:****HONOURABLE MR.JUSTICE D.A.MEHTA****HONOURABLE MR.JUSTICE Z.K.SAIYED**

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

COMMISSIONER OF INCOME TAX - Applicant(s)**Versus****SHREE AMBICA FLOUR MILLS COR- PORATION -
Respondent(s)****Appearance :**

MR BB NAIK for Applicant(s) : 1,
SERVED BY RPAD - (R) for Respondent(s) : 1,

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA**and****HONOURABLE MR.JUSTICE Z.K.SAIYED****Date : 16/04/2008****ORAL JUDGMENT****(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)**

1. The Income Tax Appellate Tribunal, Ahmedabad Bench-B has referred the following four questions for

the opinion of this Court under sec. 256(1) of the Income Tax Act, 1961 (the Act) at the instance of the Commissioner of Income Tax.

R.A.No. 713/Ahd/1997:

1. Whether the Appellate Tribunal is right in law and on facts in cancelling the penalty levied under section 271D?

2. Whether the Appellate Tribunal has correctly appreciated the facts on records so as to cancel the penalty levied?

R.A.No. 714/Ahd/1997:

1. Whether the Appellate Tribunal is right in law and on facts in cancelling the penalty levied under section 271E?

2. Whether the Appellate Tribunal has correctly appreciated the facts on record so as to cancel the penalty levied?

2. Heard Mr. B.B. Naik learned Standing Counsel for the Applicant – Revenue. Though served, there is no appearance on behalf of respondent – assessee.

3. In relation to the two questions under Reference Application No. 713/Ahd/1997, the Assessing Officer came to the conclusion that there was violation of provisions of section 269SS of the Act and hence,

imposed penalty of Rs. 81,00/- under sec. 271D of the Act. The said penalty was confirmed by the Commissioner (Appeals).

4. When the matter was carried before the Tribunal, the following facts were recorded by the Tribunal:

“The counsel for the assessee submitted that for the period December, 1987 to March 1989 total transactions in the name of Manal Anandkumar was Rs. 18,374/-. Therefore, for the Financial Year 1989-90 the opening balance was Rs. 18,374/-. Cheque of Rs. 15000/- was given on 25.7.1989 and Rs. 5000/- on 23.10.1989. The cheque were also given on 15.12.1989 and 20.12.1989, only a sum of Rs. 2100/- was paid in cash. It was submitted that this payment was not business deal but was only receipt of cash gift which was deposited in the books of the company. In the case of Sun Tours & Travels there is an opening balance of Rs. 7148/- and for a sum of Rs. 6000/- which is a cash receipt on 8.3.90. All other payments are by cheque.”

5. After appreciating the facts on record, the Tribunal came to the conclusion that though on the face of it, there seems to be a default by the assessee in the case of Manal Anandkumar. There was every reason to believe that the amount in question was only for safe custody and not for anything else.

In relation to the other party, it has been recorded by the Tribunal that Sun Tours & Travels is a concern of Shri Rajnikant, son of a partner and pertains to Sharafi account. It has further been found by the Tribunal that the assessee has reasonable cause in accepting the amount in cash.

6. In relation to the two questions referred under Reference Application No. 714/Ahd/1997, the Assessing Officer noted that the assessee had paid certain amount in cash totalling to Rs. 2,11,531/- and, therefore, imposed a penalty of Rs. 71,500/- under sec. 271E of the Act. The Commissioner (Appeals) confirmed the said penalty.

7. In the appeal filed by the assessee, the Tribunal has come to the conclusion that in light of the facts recorded in paragraph No. 7 of the order, the transactions between sister concerns are not covered by either provisions of sec. 269SS or section 269T of the Act. It has further been held that it is a common trading practice for parties to make payment on behalf of each other to sister concern. That the provisions of sec. 269SS and sec. 269T of the Act have been brought on statute book with a specific intention of curbing black money and taking advantage of cash transaction for explaining the cash available during the search. The Tribunal has, therefore, concluded that the default, if any, is of a venial nature and no penalty can be imposed.

8. In the aforesaid set of facts and circumstances of the case, it is apparent that the Tribunal has merely appreciated the facts and evidence on record. There is no evidence to come to the conclusion that such appreciation of facts and evidence is not correct, or is perverse. Therefore, the impugned order of Tribunal in relation to deletion of penalty under sec. 271D and sec. 271E of the Act does not call for any interference.

9. Accordingly, all the four questions are answered in the affirmative, that is in favour of the assessee and against the Revenue.

10. The Reference stands disposed of accordingly with no order as to costs.

सत्यमेव जयते (D.A. MEHTA, J.)

THE HIGH COURT
OF GUJARAT (Z.K. SAIYED, J.)

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